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23628 7590 04/13/2010 WOLF GREENFIELD & SACKS, P.C. 600 ATLANTIC AVENUE BOSTON, MA 02210-2206				
EXAMINER				
WOZNIAK, JAMES S				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/730,540

**Applicant(s)**

AGAPI ET AL.

**Examiner**

JAMES S. WOZNIAK

**Art Unit**

2626

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 February 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/GS/US)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Response to Amendment***

1. In response to the office action from 11/9/2009, the applicant has submitted a Request for Continued Examination (*RCE*), filed 2/9/2010, amending independent claims 1 and 11, while arguing to traverse the art rejection based on the limitation regarding the claimed recordation plan (*Amendment, Pages 8-9*). Applicant's arguments have been fully considered, however the previous rejection is maintained due to the reasons listed below in the response to arguments.
2. The applicants argue that amended claim 11, which now includes a "non-volatile" computer readable storage medium, directs the claim towards statutory subject matter and overcomes the previous 35 U.S.C. 101 rejection (*Amendment, Page 7*). It is noted, however, that this term has no specific definition in the specification (*Paragraph 0045*) which excludes non-statutory mediums. Thus, since under the broadest reasonable interpretation of the claims, the medium includes non-statutory CRM types, the previous 35 U.S.C. 101 rejection directed towards claims 11-20 has been maintained.
3. As the applicant has deleted the preamble limitation directed towards new matter in claim 11 (*i.e., "at least one" computer readable medium*) (*Amendment, Page 7*), the examiner has withdrawn the previous 35 U.S.C. 112, first paragraph rejection of claims 11-20.

4. As the computer of claim 1 has been amended to include a computer readable storage for the computer execution of a program (*Amendment, Pages 7-8*), the examiner has withdrawn the previous associated 35 U.S.C. 112, second paragraph rejection.

***Response to Arguments***

5. Applicant's arguments have been fully considered but they are not persuasive for the following reasons:

With respect to independent Claims 1 and 11, the applicant first disagrees with the position regarding the Busayapongchai et al (*U.S. PG Publication: 2004/0254792*) reference set forth in the previous Office Action (*Pages 3-5*) on the grounds that in Busayapongchai's system a program manager receives a parser output, not a "recording artist". The applicants further argue that Busayapongchai only involves an automatic process that has "nothing to do with the recording artist or what information is provided a recording artist in the even that new audio segments need to be recorded" (*Amendment, Page 8*).

In response, the examiner first notes that the presently claimed invention does not involve a recording artist or professional. The "recording plan" has an intended use "to assist a speaker", but the claimed invention only involves the creation of this plan and does not involve a step/element for forwarding the plan to such an individual (*the examiner submits, in arguendo, that Busayapongchai teaches such a forwarding in that a voice talent records an audio file for extracted text, Paragraph 0039*). Second, the examiner maintains that Busayapongchai's system does create a recording plan as is recited in the present invention. In Busayapongchai's system, a

VoiceXML script file is input and parsed by a parser to extract text that is to be rendered in spoken form in an interactive voice application or IVR system (*Paragraph 0029-0031; and parser, Fig. 1, Element 120*).. The extracted information also includes text-based naming descriptors or voice information (*Paragraphs 0030 and 0036-0037*) used to make up or populate a file name of a to-be-recorded spoken version of the text (*Paragraphs 0036-0039*). It is important to note that the result of this processing is specifically noted to comprise "text strings" that are to be issued in spoken form in a voice application at run time (*Paragraph 0031 provides one example sentence- "welcome to you telecommunication services provider..."*). As the parser runs through a VoiceXML script, text strings corresponding to each system response would thus be extracted by the parser (*Paragraphs 0029-0031*).

In the manual development portion of Busayapongchai's invention, the ultimate goal is to provide "audio files matching the exact text string" having required voice properties (*Paragraph 0035*). Thus, the extracted text strings and file descriptors are part of the recordation plan because they are necessarily provided to the developer and the professional voice talent so that a "satisfactory audio file" that matches "the exact text string" can be obtained (*Paragraph 0035 and 0039*). The fact that Busayapongchai is specifically trying to provide an audio file that matches the specifications of extracted text strings from a VoiceXML script evidences that a recordation plan of these strings is produced by the parser (*Paragraphs 0029-0031*) and supplied to a voice talent (*"speaker must be obtained who will record a new audio file that is satisfactory," Paragraph 0039*), otherwise a recording professional would be uncertain of what they are required to speak. How the voice professional receives the extracted information from the VoiceXML script is immaterial as the claim only requires the creation of a recordation plan.

A voice talent could receive the file directly, a developer could read it to them, or any number of steps could be performed. The claim only requires that a recodation plan be produced, and since Busayapongchai extracts text strings and properties from a VoiceXML scripts so that a voice talent can record a corresponding audio file, the aforementioned claim limitation is anticipated. Therefore, this argument has been fully considered, but is not convincing.

The applicants next allege that the only entity that receives "anything from the automatic processing of the VoiceXML in Busayapongchai is the developer" and the only time a recording artist is mentioned is when "the so-called manual process 348 is performed" (*Amendment, Pages 8-9*). Thus, the applicants are of the position that "all steps other than the manual recording process 348 simply do not involve the recording artist at all" (*Amendment, Page 9*).

In response, the examiner notes that these arguments regarding when a recording artist is utilized are not convincing because the claim only recites the intended use of a the plan by "a speaker". In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (*i.e., the involvement of a recording artist in script use*) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Furthermore, for an unseen VoiceXML script, the manual process of Busayapongchai is what is being relied upon in the rejection of the present claims for the preparation of the script. Although the actual recording of the parser-generated script is a manual process, its generation (*as is the case in the presently claimed invention*) is an automated process. Thus, this argument has been fully considered, but is not convincing.

The applicants lastly argue that because Busayapongchai states nothing more about how a manual process is performed, Busayapongchai is silent as to creating a recordation plan (*Amendment, Page 9*).

In response, the examiner points out that it is not the actual recording process that is relied upon in the rejection of the claims. The presently claimed invention says nothing about how the script is supplied to and used by a recording artist. As was discussed above, a parser generates text segments that need to have a matching spoken format. Thus, what must be supplied to the recording artist in some form is exactly this extracted text (*Paragraph 0039*). As Busayapongchai forms a recordation script/plan using a parser and the presently claimed invention also says nothing about how the script is supplied to a recording artist or “speaker”, this argument has been fully considered, but is not convincing.

The art rejections of the further dependent claims are traversed for reasons similar to claims 1 and 11 (*Amendment, Page 10*). In regards to such arguments, see the response directed towards claim 1.

#### ***Claim Rejections - 35 USC § 101***

6. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

7. **Claims 11-20** are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 11-20 recite an embodiment of the applicants' invention directed towards a non-volatile computer readable storage medium storing a program. It is noted, however, the recitation of the medium in the specification is not exclusory with respect to non-statutory medium types as no specific and limiting definition of "non-volatile computer readable storage medium" is provided. Thus, under the broadest reasonable interpretation, the full claim scope of "computer readable medium" would include non-statutory mediums such as carrier waves.

As per the recent USPTO notice signed by director David Kappos on 1/26/2010: "The United States Patent and Trademark Office (USPTO) is obliged to give claims their broadest reasonable interpretation consistent with the specification during proceedings before the USPTO. See *In re Zletz*, 893 F.2d 319(Fed. Cir. 1989) (during patent examination the pending claims must be interpreted as broadly as their terms reasonably allow). The broadest reasonable interpretation of a claim drawn to a computer readable medium (also called machine readable medium and other such variations) typically covers forms of non-transitory tangible media and transitory propagating signals per se in view of the ordinary and customary meaning of computer readable media, particularly when the specification is silent. See MPEP 2111.01. When the broadest reasonable interpretation of a claim covers a signal per se, the claim must be rejected under 35 U.S.C. 101 as covering non-statutory subject matter. See *In re Nuijten*, 500 F.3d 1346, 1356-57 (Fed. Cir. 2007) (transitory embodiments are not directed to statutory subject matter) and Interim Examination Instructions for Evaluating Subject Matter Eligibility Under 35 U.S.C.j101, Aug. 24,2009; p. 2."

The scope of "non-volatile computer readable storage medium" therefore includes signal-based mediums. A signal does not fall within one of the four statutory categories of invention



(i.e., process, machine, manufacture, or composition of matter) because it is an ephemeral, transient signal and thus is non-statutory. Since the scope of "non-volatile computer readable storage medium" includes these non-statutory instances, claims 11-20 are directed to non-statutory subject matter. It is recommended to amend the claims to recite a --non-transitory computer readable medium-- in order to overcome this rejection.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. **Claims 1, 4-7, 10-11, 14-17, and 20** are rejected under 35 U.S.C. 102(e) as being anticipated by Busayapongchai et al (*U.S. PG Publication: 2004/0254792*).

With respect to **Claim 1**, Busayapongchai discloses:

At least one computer coupled to a computer readable storage to execute instructions that when executed perform (*computer program implementation that is executed by a personal computer, Paragraph 0023; and computer access of computer-readable storage for program execution, Paragraphs 0024-0025*):

identifying text in the speech application program, the text indicating content of planned audio segments that are intended to be recorded and identifying associated file names for files

storing actual audio segments after the respective planned audio segments have been recorded (*identifying audio text in a VoiceXML script, referencing recordable text and associated file naming descriptors, Paragraphs 0028-0031; and recorded file naming, Paragraphs 0036-0039*);

Extracting the text and the associated filenames from the speech application program (*parser extracting text strings and file naming descriptors from VoiceXML scripts, Paragraphs 0029-0031*); and

Creating a recordation plan to assist a speaker in recording the planned audio segments, the recordation plan comprising a file that stores, in association, each identified text indicating the content of the planned audio segments and the corresponding file names for files to store actual audio segments recorded by the speaker uttering the content of the respective planned audio segments (*recording manager that passes extracted text strings to a voice talent for manual recording, wherein the information includes file name information Paragraphs 0031 and 0036-0039*).

With respect to **Claim 4**, Busayapongchai further discloses the creation of a new filename which includes newly and previously created audio data (*Paragraphs 0036-0039*).

With respect to **Claim 5**, Busayapongchai discloses the population of the new filename into the VoiceXML script (*Paragraph 0036*).

With respect to **Claim 6**, Busayapongchai further recites:

Determining if a given extracted text audio segment contains more than one sentence (*determining VoiceXML script comprising multiple sentences through parsing processing Paragraphs 0002-0003; and 0029-0031*); and

Separating the given extracted text into two or more separate text segments such that each of the two or more separate text segments includes no more than one sentence segments to obtain audio segments containing only one sentence of audio text, if the given extracted audio segments contain segments contain more than one sentence of audio-text (*parsing (i.e., dividing), the VoiceXML script into separate portions or sentences, Paragraphs 0029-0031*).

With respect to **Claim 7**, Busayapongchai further discloses:

Processing the extracted audio segments further includes sorting the extracted audio segments (*ordering text sequences for recording, Paragraph 0032*).

With respect to **Claim 10**, Busayapongchai discloses the VoiceXML script as applied to Claim 1.

With respect to **Claim 11**, Busayapongchai discloses the method performed by the computer system, as applied to claim 1, implemented as a program stored on a computer readable medium (*Paragraphs 0023-0026*).

**Claims 14-17** contain subject matter respectively similar to Claims 4-7, and thus, are rejected under similar rationale.

**Claim 20** contains subject matter similar to Claim 10, and thus, is rejected under similar rationale.

### ***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. **Claims 2-3 and 12-13** are rejected under 35 U.S.C. 103(a) as being unpatentable over Busayapongchai et al in view of Ladd et al (*U.S. Patent: 6,269,336*).

With respect to **Claim 2**, Busayapongchai discloses the computer system for extracting and producing audio text for recording as applied to Claim 1. Busayapongchai does not specifically suggest identifying text associated with a pause, creating a silence file associated with the identified pause, and modifying an audio file referenced by the text containing the pause information. Ladd, however, recites the ability to process a “break” element in VoiceXML script to divide audio text scripts, insert a predefined length of audio silence, and divide audio prompts (*Col. 29, Line 58- Col. 30, Line 26*).

Busayapongchai and Ladd are analogous art because they are from a similar field of endeavor in VoiceXML processing systems. Thus, it would have been obvious to a person of ordinary skill in the art, at the time of invention, to modify the teachings of Busayapongchai with the break element taught by Ladd in order to configure and add natural speaking characteristics to a VoiceXML page (*Ladd, Col. 16, Lines 11-20*).

With respect to **Claim 3**, Ladd further discloses:

Determining if the pause is indicated as being inserted within a planned audio segment (*identifying a break element, Col. 29, Line 58- Col. 30, Line 26*); and

Separating the text into separate text segments separated by the pause if the pause is indicated as being inserted within the planned audio segment (*break element is inserted between two segments of audio text, Col. 29, Line 58- Col. 30, Line 26*).

**Claims 12-13** contain subject matter respectively similar to Claims 2-3, and thus, are rejected under similar rationale.

12. **Claims 8 and 18** are rejected under 35 U.S.C. 103(a) as being unpatentable over Busayapongchai et al in view of Wen et al (*U.S. Patent: 6,341,959*).

With respect to **Claim 8**, Busayapongchai discloses the method for extracting and producing audio text for recording as applied to Claim 1. Busayapongchai also recites VoiceXML script comprising multiple sentences (*Paragraphs 0002-0003; and 0029*). Busayapongchai does not specifically suggest modifying multiple text segments to obtain only a single text segment, while deleting the other segment, if extracted audio segments contain more than one sentence, however, Wen recites the ability to detect and delete a repeated sentence, thus obtaining a single instance of that sentence (*Col. 3, Lines 64-65*).

Busayapongchai and Wen are analogous art because they are from a similar field of endeavor in language user interfaces. Thus, it would have been obvious to a person of ordinary skill in the art, at the time of invention, to modify the teachings of Busayapongchai with the repeated sentence detection means taught by Wen in order to save storage space in the VoiceXML system taught by Busayapongchai (*Wen, Col. 3, Lines 64-65*).

**Claim 18** contains subject matter respectively similar to Claim 8, and thus, are rejected under similar rationale.

13. **Claims 9 and 19** are rejected under 35 U.S.C. 103(a) as being unpatentable over Busayapongchai et al in view of Ladd et al, and further in view of Heinze et al (*U.S. Patent: 6,915,254*).

With respect to **Claim 9**, Busayapongchai in view of Ladd discloses the method for extracting and producing audio text as applied to Claim 1. Ladd teaches:

Identifying text indicating a variable in the extracted audio segments (*"option" element in VoiceXML that defines multiple variable prompts, Col. 27, Line 53- Col. 29, Line 35*);

Determining if the variable has an associated text file containing variable values (*"option" element contains multiple segments of audio text, Col. 29, Lines 5-35*);

Creating a variable audio segment for each said variable value, if the variable has an associated text file (*audio prompt that is provided for each variable instance in the "option" element, Col. 29, Lines 5-35*); and

Modifying the audio segment containing the text indicating the variable (*"option" element is divided using separate script tags for each variable, Col. 29, Lines 5-35*).

Ladd further recites that the variables within the option elements are nouns or open class words (*Col. 29, Lines 5-35*). Ladd provides the benefit of configuring and adding natural speaking characteristics to a VoiceXML page (*Ladd, Col. 16, Lines 11-20*). Busayapongchai in view of Ladd does not specifically teach performing text parsing by dividing text at a closed class word, wherein a first audio text ends with a non-closed class word preceding the variable. Such a parsing principle, however, is well known in text processing, as is evidenced by Heinze. Heinze discloses breaking text at closed class words (*i.e., articles, prepositions, pronouns, etc.*) (*Col. 11, Lines 45-47; and Col. 19, Line 64- Col. 20, Line 12*). Thus, in the case of Heinze, the

word preceding the closed-class word and ending the first segment would be non-closed class and would precede the variable, which are nouns (*i.e., open class words*) in the case of Ladd.

Busayapongchai, Ladd, and Heinze are analogous art because they are from a similar field of endeavor in text file processing systems. Thus, it would have been obvious to a person of ordinary skill in the art, at the time of invention, to modify the teachings of Busayapongchai in view of Ladd with the parsing scheme taught by Heinze in order to provide natural language structure understanding in a script (*Heinze, Col. 4, Lines 33-37*).

**Claim 19** contains subject matter similar to Claim 9, and thus, is rejected under similar rationale.

### *Conclusion*

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: See PTO-892.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James S. Wozniak whose telephone number is (571) 272-7632. The examiner can normally be reached on M-Th, 7:30-5:00, F, 7:30-4, Off Alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richemond Dorvil can be reached at (571) 272-7602. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/James S. Wozniak/  
Primary Examiner, Art Unit 2626